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Torts

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TORTS

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A large number of cases in the field of Torts were decided during the period covered by this Survey, as expected, since this is undoubtedly the most active area of litigation. Although many appellate decisions were not of general interest, being routine decisions as to whether a jury issue was presented on the particular points, many cases did involve important questions of substantive law.

If this reviewer may be permitted a speculative opinion, several discernible trends appear in the decisions of the South Carolina Supreme Court. First, with the increasing case load, there is the apparent and understandable tendency to dismiss appeals on rather technical procedural grounds, principally the failure to preserve and properly present exceptions and grounds of appeal. Second, in the negligence cases which comprise by far the bulk of the tort cases, primarily automobile cases, our supreme court is exhibiting an increasingly sophisticated and analytical approach on such matters, for example, as proximate cause, last clear chance, contributory negligence, and searching the record to see if a verdict is supported by the evidence and inferences to be drawn therefrom.

Landlord's Liability In Tort For Injuries to Tenant

Conner v. Farmers & Mer. Bank[1] is an important case involving the tort liability of a landlord for misfeasance in making repairs and also the substantive law of contributory negligence. The plaintiff, an elderly lady, had rented an apartment from the defendant's testatrix whereby the lessor agreed to keep the premises "safe and comfortable." Due to erosion of surface water, a section of the brick floor of the outside entrance to the apartment settled. After complaints by the plaintiff, the landlord undertook to repair the brick floor, but too much sand was added to the mortar used between the brick, causing the mortar to crumble easily, leaving openings between the brick approximately three-quarters of an inch deep. More than a year after the repairs were made, the plaintiff fell and sustained an injury when her shoe heel caught in one of the openings between the brick.

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1. 243 S.C. 132, 132 S.E.2d 385 (1963).

The plaintiff elected to sue in tort, rather than for breach of contract to repair. From the verdict in favor of the plaintiff the defendant appealed, relying upon the well settled rule of law that the relationship of landlord and tenant imposes no legal duty on the landlord to keep the leased premises in repair, and that even where there is a valid contract to repair, failure to comply merely gives rise to a cause of action for breach of contract, under which damages are not recoverable for personal injuries sustained by reason of the defective condition of the premises.

However, the South Carolina Supreme Court drew a distinction between negligence on the lessor's part in making repairs and a failure to make repairs as promised, holding that negligence on the part of the lessor in making repairs or improvements is regarded as an act of misfeasance, subjecting him to tort liability for any resulting damages. Misfeasance in making repairs is an exception to the general rule of the landlord's nonliability in tort, but it is supported by authorities.[2]

The *Connor* case is perhaps more important for its treatment of the substantive law of contributory negligence, discussed below.

Wrongful Death

Three decisions this year involved important points of interpretation of Lord Campbell's Act,[3] two cases involving defenses of intra-family immunity and the other involving interesting and important conflicts of laws problems. *Fowler v. Fowler*[4] was an action for wrongful death brought by the administrator of a deceased wife's estate against her husband for the benefit of two minor unemancipated children. The defendant demurred upon the grounds that to permit the action for the benefit of the minor unemancipated children would in effect allow the children to sue their father in tort, contrary to the settled rule in this state that an unemancipated child has no right of action against his parent for a personal tort.[5] The court affirmed the ruling below allowing the suit to lie, since the test for the maintenance of a wrongful death action is whether the decedent could have sued for personal injuries, and it is well settled that a wife can main-

2. Note, *Personal Injuries to the Tenant; The Landlord's Liability in Tort Therefor,* 10 S.C.L.Q. 307 (1958).

3. S.C. CODE ANN. §§ 10-1951 to -1956 (1962).

4. 242 S.C. 252, 130 S.E.2d 568 (1963).

5. Kelly v. Kelly, 158 S.C. 517, 155 S.E. 888 (1930).

tain an action against her husband for personal injuries sustained in an automobile accident.[6] The decision in the *Fowler* case was based upon the construction of the applicable statutes,[7] rather than upon policy considerations.

Maxey v. Sauls[8] was a suit by the administratrix of the estate of a deceased minor against the estate of his deceased parent. A demurrer to the plaintiff's complaint on behalf of the deceased father's administrator was sustained upon the grounds that the plaintiff's intestate was an unemancipated child and therefore had no cause of action against his parent's estate. The court affirmed, overruling the plaintiff's contentions on appeal as follows: (1) the death of a parent or child does not remove the reason for the rule since a wrongful death action is not maintainable unless the decedent could have maintained an action to recover for his injuries had he lived; (2) allegations of wilfulness on the part of the deceased parent do not change the rule, even though the Wrongful Death Statute[9] refers to "a wrongful act, neglect or default"; (3) the fact that the deceased father carried automobile liability insurance does not change the rule by eliminating any disruption of family unity or harmony which is the basis for the immunity rule, since regardless of the presence of liability insurance the original liability is that of the parent and the presence of insurance does not create liability or a cause of action where none otherwise existed.

McDaniel v. McDaniel[10] partially settled a question which from time to time has greatly concerned South Carolina attorneys practicing on the Georgia side of the state: when suit is brought in the courts of South Carolina for a wrongful death which occurred in Georgia, is the proper party plaintiff the personal representative of the decedent or the beneficiary designated by the Georgia Wrongful Death Act?

Of course, under South Carolina law, the right of action is vested in the personal representative of the decedent's estate,[11] while the Georgia statute gives the right of action to the beneficiary or beneficiaries jointly.[12] This question is not one of aca-

6. Pardue v. Pardue, 167 S.C. 129, 166 S.E. 101 (1932).
7. S.C. CODE ANN. §§ 10-216, -1951 (1962).
8. 242 S.C. 247, 130 S.E.2d 570 (1963).
9. S.C. CODE ANN. § 10-1951 (1962).
10. 243 S.C. 286, 133 S.E.2d 809 (1963).
11. S.C. CODE ANN. § 10-1952 (1962).
12. GA. CODE ANN. § 105-1306 (1933).

demic interest alone, as it becomes of crucial importance in litigation and in concluding proper settlement of such claims.

The *McDaniel* case involved the Georgia homicide of a woman, in which case the Georgia statute provides that the husband and/or children *may recover* and that those surviving at the time the action is brought *shall sue* jointly and not severally. Under familiar conflicts of laws principles, the *lex loci* (here Georgia law) governs the substantive rights of the parties and the *lex fori* (here South Carolina law) governs procedural matters. Relying upon Judge Timmerman's decision in *Anderson v. Lane*,[13] the court held that since the Georgia statute imposed the mandatory requirement that suit be brought by the husband and/or children ("shall sue jointly and not separately"), such provisions are substantive and not merely procedural. Hence, it was held that the trial court properly dismissed the action brought by the administrator.

Our court had previously considered the similar situation where suit is brought in South Carolina for the wrongful death in Georgia of a husband and father in which case the Georgia statute provides: "A widow, or if no widow, a child or children, may recover for the homicide of the husband or parent." *Bussey v. Charleston & W. Car. Ry.*[14] held that in such case suit in South Carolina must be brought by the personal representative and could not be brought by the widow in her individual capacity.

The court in the *McDaniel* case held that the presence of the words "shall sue jointly and not separately" in the Georgia statute relating to recovery for death of the wife required a holding that such provision formed a part of the right and not of the remedy alone. However, it seems that such language merely forbids separate suits by the husband and children, and does not require a holding contrary to the *Bussey* case, especially since the primary portion of both statutes is the same ("may recover"). The reasoning of the *McDaniel* case casts some doubt on the authority of the *Bussey* case, but if it is still sound law, we are in the anomalous position of holding that the proper party plaintiff in a suit brought in South Carolina for a wrongful death occurring in Georgia depends upon the sex of the decedent.

13. 97 F. Supp. 265 (E.D.S.C. 1951).
14. 73 S.C. 215, 53 S.E. 165 (1906).

Governmental Immunity

Several cases this year involved the immunity of governmental agencies from tort suits, and the interpretation of statutes waiving immunity in certain situations.

Jones v. Jones[15] probably received more newspaper publicity than any other tort case this year. A Sumter attorney sued his wife, the Probate Judge of Sumter County, several physicians and the South Carolina State Hospital, alleging various tortious acts including a conspiracy to arrest and incarcerate him unlawfully in the State Hospital, subjecting him to shock and other treatments, and depriving him of personal and property rights on the false contention that he was mentally ill. The court affirmed the sustaining of the demurrer interposed by the State Hospital, re-affirming the thoroughly settled rule that an agent, instrumentality or subdivision of the state cannot be sued in a tort action in the absence of express legislative consent, which had not been given in this case. The court further held that the state constitution makes no provision for compensation by the state for a citizen's deprivation of liberty and incidentally of his property rights, since such deprivation does not amount to a taking for a public use. Further, the court re-affirms the settled rule that there is no distinction between governmental and proprietary functions of the sovereign in South Carolina.

Cochran v. City of Sumter[16] held that the requirement of section 47-71 of the 1962 Code that a verified claim must be filed with a municipality within three months after the date of injury in order to maintain an action against the municipal corporation is an absolute requirement and was not met by a letter sent within the time limit. Actual knowledge by the governing body of the municipality or of its officials does not waive, preclude or estop the governmental agency from asserting failure to give such notice, and the requirement of verification is an absolute requirement, being a matter of substance and not of mere form.

Patrick v. South Carolina Highway Dep't[17] held that the statutes waiving the highway department's immunity from suit for wrongful death[18] do not require an affirmative allegation in the complaint that the beneficiaries are free from contributory negli-

15. 243 S.C. 600, 135 S.E.2d 233 (1964).
16. 242 S.C. 382, 131 S.E.2d 153 (1963).
17. 243 S.C. 246, 133 S.E.2d 751 (1963).
18. S.C. CODE ANN. §§ 33-229 to -232 (1962).

gence, but only that the decedent's negligence did not cause or contribute to his injury.

Coker v. Nationwide Mut. Ins. Co.[19] holds that in an action under the statute authorizing suit directly against the school bus liability insurer for personal injuries suffered because of the negligent operation of a school bus,[20] allegations as to recklessness, willfulness and wantonness are irrelevant and should be stricken from the complaint. The court further held that if the defense of contributory negligence were raised in the answer, the plaintiff would have a right to overcome such plea by a showing of reckless, wilful and wanton conduct.

Indemnity Between Joint Tortfeasors

Two important cases on the right of indemnity between joint tortfeasors were decided by our court this year. Taking both cases together, they establish the principle that no right of indemnity exists under the common law in South Carolina between mere joint tortfeasors, in the absence of an express contract of indemnity. However, a number of questions were left undecided, and this will doubtless be a growing area of tort litigation in the future.

In *Atlantic Coast Line R. R. v. Whetstone*[21] the complaint alleged in substance that the plaintiff railroad had compromised the FELA claim of its employee who had been injured while riding the lead end of a track car which struck a scaffolding erected by the defendant too close to the spur track; the plaintiff sought to be indemnified by the defendant in the sum of 6,250 dollars, the amount of the settlement, upon the theory that the injury and loss was directly and proximately caused by the defendant's "active gross negligence and carelessness" in erecting and permitting the unmarked and unlighted scaffolding to remain too close to the railroad tracks.

The court in a three-two decision held that the trial court correctly sustained the defendant's demurrer, holding that there can be no right of indemnity among mere joint tortfeasors, reasoning that since negligence is required to impose liability under FELA, the plaintiff by making the settlement with its employee in effect admitted negligence in failing to provide its employee

19. 243 S.C. 170, 133 S.E.2d 122 (1963).
20. S.C. CODE ANN. § 21-840 (1962).
21. 243 S.C. 61, 132 S.E.2d 172 (1963).

a safe place to work. The court consequently applied the general rule denying indemnity of one joint tortfeasor against another.

The dissenting opinion of Mr. Justice Brailsford, joined by Mr. Justice Bussey, seems more just and much more persuasive than the majority opinion, pointing out that the facts alleged in the complaint fall clearly within the exceptions to the general rule recognized in the majority opinion and that under overwhelming authorities the right of indemnity arises in favor of one tortfeasor whose negligence has been merely passive against another whose negligence has been active, particularly where the passive negligence amounts to a failure to discover or correct a defect or remedy a dangerous condition caused by the act of the one primarily responsible.

South Carolina Elec. & Gas Co. v. Utilities Constr. Co.[22] was a suit on an express contract of indemnity rather than under the common law as was the *Whetstone* case.[23] The defendant, an independent contractor, had entered into a written contract with the plaintiff, holder of the electric franchise for the Town of Holly Hill, for certain construction and maintenance work, including the replacement of an old pole located in the sidewalk of Main Street. The contract included the following:

> (e) The Contractor hereby agrees to indemnify and to hold the Company harmless from any and all claims for damages to persons and/or property arising out of or in any way connected with the performance of any work covered by this contract.[24]

In performing the work, the defendant repaired the sidewalk in an improper manner, using a defective mixture of cement. The defect could not be detected by appearance upon inspection. Four years later a Mrs. Brant stepped into the depression in the patched area of the sidewalk, fell and was severely injured. Mrs. Brant sued both the present plaintiff and the defendant, and the plaintiff paid her 36,000 dollars in settlement of her claim and instituted this suit to cover said sum plus attorneys' fees and costs for the defendant under its indemnity contract.

The principal defenses apparently were that no indemnity is allowed as between joint tortfeasors, that the written contract

22. 244 S.C. 79, 135 S.E.2d 613 (1964).

23. Atlantic Coast Line R.R. v. Whetstone, 243 S.C. 61, 132 S.E.2d 172 (1963).

24. South Carolina Elec. & Gas Co. v. Utilities Constr. Co., 244 S.C. 79, 83, 135 S.E.2d 613, 614 (1964).

did not cover the claimed liability, that the defendant's liability, if any, terminated upon completion of the work and its acceptance by the plaintiff and that the plaintiff failed to inspect and discover the defendant's faulty work.

The plaintiff sought to impose liability against the defendant under the contract of indemnity and under indemnity implied by law. Judgment for the plaintiff was affirmed by a majority of the court under the written contract of indemnity. Two members of the court felt that liability should also be imposed upon the theory of indemnity implied by law.

The court distinguished the *Whetstone* case[25] which denied recovery of one joint tortfeasor against another when no contractual or legal relationship existed between them, since there was an express contract of indemnity in the *South Carolina Elec. & Gas* case. Further, acceptance of the work by the plaintiff did not relieve the defendant from liability as the defect was latent, not subject to detection by reasonable inspection, and by its nature would not become apparent until a later time. By stipulation, the plaintiff had no actual knowledge of the dangerous defect.

Taking the two cases together, there is still some doubt whether the distinction between active and passive negligence has any application to a claim for indemnity under common law principles.

Uninsured Motorist Law

Two cases reviewed in the Torts Section of this year's Survey arose under the Uninsured Motorist Act, one involving punitive damages and the other concerning a subrogation claim.

A case which excited much discussion in legal circles and whose holding was subsequently reversed by legislative enactment was *Laird v. Nationwide Ins. Co.*[26] in which the court held in a 3 to 2 decision that neither the provisions of the insurance policy in question nor the Uninsured Motorist Act[27] required coverage for punitive damages awarded the plaintiff-insured against an uninsured motorist. The narrow holding of the case is that punitive damages are not awarded to compensate for "bodily injury," since actual or compensatory damages serve that function. By

25. 243 S.C. 61, 132 S.E.2d 172 (1963).
26. 243 S.C. 388, 134 S.E.2d 206 (1964).
27. S.C. CODE ANN. §§ 46-750.11 to -.28 (Supp. 1964).

legislative act the law of the *Laird* case has been overruled, so that the Uninsured Motorist Act now covers both actual and punitive damages, up to the statutory limits.

Motors Ins. Corp. v. Surety Ins. Co.[28] held that a collision insurer which has paid a loss caused by actionable negligence of the operator of an uninsured motor vehicle is not entitled to subrogation against the uninsured motorist coverage of the same insured. The court reasoned that subrogation is an equitable right and is available only where the equities of the party asserting it are superior to those of the party against whom it is claimed, that the right of subrogation does not automatically arise upon proof that the insured could have recovered from the third party, and that the Uninsured Motorist Act does not provide for indemnity in this situation, particularly since the collision insurer received a premium for bearing such risk of loss while the uninsured motorist coverage by law must be provided without premium.

Tort Liability of Life Insurance Company For Issuing Policy Without Insured's Consent

The interesting case of *Ramey v. Carolina Life Ins. Co.*[29] holds that an insurer is liable for damages in a tort action for either negligently or knowingly issuing a policy of life insurance in favor of a beneficiary who has obtained such policy without the knowledge or consent of the insured, even though the beneficiary has an insurable interest in the insured's life. In this case the plaintiff alleged that his wife had poisoned him with arsenic in an attempt to kill him to collect the 5,000 dollars benefits of a life insurance policy issued by the defendant without the plaintiff's knowledge or consent.

Our court had previously held a life insurance policy issued under such circumstances void as against public policy,[30] but the *Ramey* case goes much further in holding the insurer liable in tort under such circumstances and in declaring that a life insurance company has a duty to use reasonable care not to issue a policy of life insurance in favor of a beneficiary who has no interest in the continuation of the life of the insured. This is

28. 243 S.C. 487, 134 S.E.2d 631 (1964).

29. 244 S.C. 16, 135 S.E.2d 362 (1964).

30. Hack v. Metz, 173 S.C. 413, 176 S.E. 314 (1934); Moseley v. American Nat'l Ins. Co., 167 S.C. 112, 166 S.E. 94 (1932).

the first decision to this effect in South Carolina, and apparently there are few similar decisions in the United States.[31]

In the *Ramey* case, which arose by way of demurrer to the complaint, the court refused to hold upon a consideration of the complaint that the proximate cause of the plaintiff's poisoning was the intervening criminal act of his wife which was not reasonably foreseeable by the defendant.

Attachment Lien Against Negligently Operated Vehicle

In *Layton v. Flowers*[32] the court followed the principle of *stare decisis* and refused to disturb the precedent of *Tate v. Braizer*[33] which held that the plea of bona fide purchaser of an automobile is no defense against the statutory collision lien[34] which provides that the lien against an automobile which is driven negligently causing damage shall be next in priority after taxes. However, the court equitably limited the value of such lien to the automobile's fair market value after the collision, and would not allow the attaching creditor the windfall of the extensive repairs paid for by the innocent purchaser.

Sudden Emergency Doctrine

In *Elrod v. All*[35] the plaintiff, a guest passenger in the All automobile, instituted suit for personal injuries against the defendant All, her host driver, and Bankston, driver of the adverse vehicle. The Bankston vehicle had entered U. S. Highway No. 52 directly in front of the All automobile, and to avoid a collision, the defendant All cut sharply to his left, colliding with a tree, causing personal injuries to the plaintiff. Verdict for the plaintiff was reversed and judgment entered for defendant All, the only appellant, upon the grounds that under the guest statute[36] there was no liability on his part. The complaint alleged facts which indicated that the defendant All was faced with a sudden emergency. In reversing the case, the South Carolina Supreme Court referred to the general rule that the parties to an action are judicially concluded and bound by the allegations of their

31. See Liberty Nat'l Life Ins. Co. v. Weldon, 267 Ala. 171, 100 So.2d 696, 61 A.L.R.2d 1346 (1957).
32. 243 S.C. 421, 134 S.E.2d 247 (1964).
33. 115 S.C. 283, 105 S.E. 412 (1920).
34. S.C. CODE ANN. § 45-551 (1962).
35. 243 S.C. 425, 132 S.E.2d 410 (1964).
36. S.C. CODE ANN. § 46-801 (1962).

pleading, unless withdrawn, altered or stricken by amendment or otherwise, and that the allegations, statements or admissions contained in a pleading are conclusive against the pleader, the evidence contradicting such pleadings is inadmissible. The court further referred to the general rule that a party is concluded by his own testimony which is favorable to the adverse party and by testimony of his own witnesses where he does not prove the facts to be otherwise than as such witnesses testified them to be.

Watson v. Aiken[37] is an excellent illustration of the application of the sudden emergency or sudden peril doctrine in the factual setting of a child on a rolling coaster wagon emerging suddenly from a driveway.

Invasion of Right of Privacy

Nappier v. Jefferson Standard Life Ins. Co.[38] an action for invasion of the right of privacy, arose out of the rape at Kingstree, S. C., of two girls employed with the "Little Jack" puppet show of the Dental Division of the State Board of Health. The defendant's television station WBTW did not mention the plaintiffs' names, but showed pictures of the distinctive red station wagon with an identifying inscription on the door and described the vehicle as that used by the two young women who had been attacked in Kingstree. The district court dismissed the complaints, but the court of appeals reversed, holding the plaintiffs had stated a cause of action under the common law and under the statute[39] making it a misdemeanor to publish the "name" of a rape victim, the majority of the appellate court holding that "name" as used in the statute meant "identity."

Wrongful Interference with Contractual Relations

In *Crowe v. Domestic Loans, Inc.*[40] the complaint against both Domestic Loans, Inc. and Lenders, Inc. alleged that because of telephone calls by the defendants to the plaintiff's manager and supervisor about his indebtedness, the plaintiff was discharged from his employment at Eckerd's Drug Store. In appealing the denial of its demurrer, the appellant Domestic Loans contended that there was no allegation of concerted action of the two defendants, and hence their acts were independent and a joint suit

37. 243 S.C. 368, 133 S.E.2d 833 (1963).
38. 322 F.2d 502 (4th Cir. 1963).
39. S.C. CODE ANN. § 16-81 (1962).
40. 242 S.C. 310, 130 S.E.2d 845 (1963).

would not lie. After summarizing the substantive law of tortious interference with contractual relations, the court applied the established rule that a liability which is both joint and several arises from separate and independent acts of two or more tortfeasors where a single injury proximately results, even in the absence of community of design or concerted action.

Employer's Liability for Injury to Employee

Hodge v. Forester Trucking Co.[41] was an action involving the common law liability of an employer for injuries to an employee. The plaintiff allegedly sustained injuries in a fall from a truck-trailer body caused when the defendant Forester, vice-president of the defendant corporation, suddenly pulled on an electric cord attached to a drill being operated by the plaintiff causing him to fall from the trailer. The court held that viewing all the testimony most favorably to the plaintiff, a jury question was presented as to actionable negligence of the defendants and as to contributory negligence on the part of the plaintiff.

Last Clear Chance

The doctrine of last clear chance was clarified in several decisions this year.

In *Suber v. Smith*[42] the court held that the doctrine (sometimes called the doctrine of discovered peril, the doctrine of supervening negligence or the humanitarian doctrine) does not apply to a situation where the defendant, while under a duty to discover the danger to the plaintiff, did not actually discover it and the injured person was physically able to escape from the peril at any time up to the moment of impact. Furthermore, said the court:

> . . . where the injured person was not oblivious of his danger but had actually discovered the facts of his peril and ought to have realized the danger, and he was physically able to extricate himself, his contributory negligence has been held to relieve the defendant motorist of liability for negligence although the danger was actually discovered, and the peril ought to have been realized by the defendant.[43]

41. 243 S.C. 214, 133 S.E.2d 246 (1963).
42. 243 S.C. 458, 134 S.E.2d 404 (1964).
43. *Id.* at 468, 134 S.E.2d at 409.

In *Hopkins v. Reynolds*[44] the court held that the doctrine is not available to the plaintiff where he was guilty of contributory negligence as a matter of law for otherwise such defense would disappear.

The court further stated:

> However, regardless of the view taken of the testimony in this case, the fact remains that by the exercise of due care the plaintiff could have avoided the accident by simply stopping at anytime before she was struck. Yet, after the car could have been seen, she continued to walk from a place of safety into the oncoming vehicle. Her active negligence continued up to the time of the impact and bars recovery.[45]

The doctrine was also involved in *Southern Ry. v. Wilkinson Trucking Co.*[46] in which it was held to be a jury issue.

Pedestrian Cases

A special category this year is the group of four pedestrian vs. automobile cases. It is noteworthy that in all four cases verdicts for the plaintiffs were reversed and entered for the defendant on the ground of contributory negligence as to the adult plaintiff-pedestrians and on the ground of no actionable negligence of the defendant as to the two minor plaintiff-pedestrians.

In *Hopkins v. Reynolds*[47] the plaintiff, a seventy-eight year-old pedestrian, was struck by the defendant's automobile as she was crossing the road in daylight to go to her mailbox. The South Carolina court reversed a verdict for the plaintiff, holding her guilty of contributory negligence as a matter of law, stating the following quotation from *Carma v. Swindler*[48] applicable to the situation:

> We find no evidence in the record justifying the inference that respondent, if negligent at all, was guilty of more than simple negligence. And we think that the evidence on behalf of appellant points conclusively to contributory negligence on her part. It was her duty before attempting to cross the highway, to see that the way was clear, especially since

44. 243 S.C. 568, 135 S.E.2d 75 (1964).
45. *Id.* at 574, 135 S.E.2d at 77.
46. 243 S.C. 150, 132 S.E.2d 491 (1963).
47. 243 S.C. 568, 135 S.E.2d 75 (1964).
48. 228 S.C. 550, 91 S.E.2d 254 (1956).

> she was about to cross at a point where vehicular traffic had the right-of-way; and her failure to look would have been contributory negligence. Had she looked, she could not have failed to see, as her daughter did (here plaintiff's son), the lights of respondent's truck approaching. It is obvious therefore that she either did not look, or, if she looked, she did so in such careless fashion as not to see what was in plain view, in either case she was guilty of contributory negligence as a matter of law.

In *Dean v. Cole*[49] there was only circumstantial evidence as to the identity of the hit-and-run automobile which struck the plaintiff's decedent at night near the center of the pavement. The only evidence of negligence on the part of the motorist, assuming it to have been the defendant, was the estimate of another motorist in front of the defendant's car that it was traveling 60 to 70 miles per hour. The court of appeals held (1) even assuming speed of the defendant's car, there was no factual basis for an inference that such speed was the proximate cause of the accident; and (2) the plaintiff's intestate was guilty of contributory negligence as a matter of law, for either he failed to look before walking into the highway, or if he looked, he did so in such a negligent and careless manner that he failed to see what was obvious.

Gunnels v. Roach[50] was an action for personal injuries to the minor plaintiff who, while playing tag, ran from between parked cars into the right rear door of the defendant's automobile. This was an unusual case, for the court held that despite testimony in the record that the defendant said he was actually responsible for it in that he was looking off the road, there was no actionable negligence on the part of the defendant, since failure to keep a proper lookout, under the circumstances, could not have been a proximate cause of the accident. Here the defendant's inattention was regarded as coincidental rather than causal. The court relied upon the recent leading case on proximate cause, *Horton v. Greyhound Corp.*[51] The court stated:

> The circumstantial evidence fully supports the uncontradicted testimony that the boy was in view only momentarily before the impact. Had defendant seen him at the instant

49. 326 F.2d 907 (4th Cir. 1964).
50. 243 S.C. 248, 133 S.E.2d 757 (1963).
51. 241 S.C. 430, 128 S.E.2d 776 (1962).

> he became visible, the collision could not have been avoided. Under the familiar "but for" or "without which" test of causal connection, negligence in failing to properly look out for that which could not have been seen in time to have avoided an accident can not be held a proximate cause of resulting injuries.[52]

In view of the photographic evidence of the scene and the allegation of the complaint that the plaintiff was struck while attempting to cross the road, the court rejected the plaintiff's testimony that he was struck while a yard off the road as being without probative value.

In *Watson v. Aiken*,[53] an action for the wrongful death of a minor, the plaintiff's intestate riding a coaster wagon was struck by the defendant's automobile after entering the highway from a private driveway. The defendant's view of the driveway on his right was obstructed by tall grass and weeds. A verdict for the plaintiff was reversed and judgment entered for the defendant. The plaintiff charged the defendant with negligence in failing to turn farther to his left, to turn to his right or to remain in his lane of travel so as to avoid striking the child. The court rejected this contention, stating:

> We think that either view imposes on the defendant the burden of exercising a degree of skill and foresight which the law does not require. It is abundantly clear that the defendant, without negligence on his part, was cast in a sudden emergency and is entitled to the benefit of the applicable rule.[54]

The plaintiff in arguing to support the verdict contended that an inference of excessive speed could be drawn from the length of the skid marks (70 feet 4 inches) and the post collision position of the wagon (50 feet from the point of impact) and of the child's body (18 feet beyond the wagon). The court stated that the post collision positions had no probative value on the issue of speed because the impact occurred within ten feet of the automobile's stopping point. The court also held that an inference of excessive speed could not be drawn from the evidence as to the length of skid marks without some evidence as to the braking

52. Gunnels v. Roach, 243 S.C. 248, 252, 133 S.E.2d 757, 760 (1963).
53. 243 S.C. 368, 133 S.E.2d 833 (1963).
54. *Id.* at 373, 133 S.E.2d at 836.

distance required to stop a vehicle from the speed otherwise indicated by the evidence.

Contributory Negligence

This old plaintiffs' stumbling block was responsible for the reversal of several important plaintiffs' verdicts this year. In others the defendants were unsuccessful on appeal in arguing that the plaintiffs were barred by contributory negligence as a matter of law. Of course the facts make the law.

Two of the cases were discussed in the section above, involving adult pedestrians.

Conner v. Farmers & Mer. Bank[55] is an extremely important case on the substantive law of contributory negligence. The testimony in that case showed that the plaintiff, an elderly woman, was well aware of the hazardous condition of the brick floor which caused her fall and resulting injuries. However, she testified that as she began to go out of the door, she noticed that the screen door was slightly open and that her pet parakeet was about to escape, which momentarily distracted her attention and caused her to turn loose of the table to which she was holding, and with her attention momentarily distracted, her shoe heel caught in one of the openings between the brick and she fell. The defendant argued strenuously that the plaintiff was barred from recovery by her own contributory negligence and assumption of risk.

In sustaining the verdict for the plaintiff, the South Carolina Supreme Court recognized certain principles of law not heretofore recognized in South Carolina as follows:

> The general rule for determining whether forgetfulness by a plaintiff of a known danger constitutes contributory negligence is no different from the rule applied in other situations, that is, forgetfulness or inattention will amount to negligence if it amounts to a failure to exercise due care. The law recognizes that the person of ordinary reason and prudence sometimes forgets, is sometimes inattentive, and is not perfect or infallible. Therefore, forgetfulness or inattention may be excused when the circumstances are such that a jury could reasonably conclude that a person of ordinary prudence, so situated, might have forgotten.

55. 243 S.C. 132, 132 S.E.2d 385 (1963).

> While forgetfulness of, or inattention to, a known danger may under certain circumstances be excused, it is recognized that a too liberal application of the principle can result in fraud and could completely destroy the defense of contributory negligence. Therefore, it is settled that mere forgetfulness or inattention is insufficient. It is not enough to say "I forgot." Neither is it enough to merely show that there was some diverting circumstance at the time. In order to keep forgetfulness of, or inattention to, a known danger from constituting contributory negligence as a matter of law, the evidence must be such as to give rise to a reasonable inference that the forgetfulness or inattention relied upon was induced by some immediate, substantial and adequate disturbing cause, to be determined in the light of the exigencies of the situation and the facts and circumstances of the particular occasion.[56]

There is no reason why the same circumstances which might excuse contributory negligence on the part of the plaintiff would not also excuse or justify conduct otherwise amounting to negligence on the part of a defendant.

Baker v. McNaughton[57] involves the defense of contributory negligence arising from intoxication in an unusual factual setting. After McNaughton's cab had delivered the plaintiff to his home after a night of rather heavy drinking, McNaughton's battery failed to start the cab. Jenkins' cab came to push McNaughton's cab, and the plaintiff, his curiosity piqued, came to the scene from his home 500 feet away. While the two taxicabs were positioned for pushing on paved Highway No. 200, the defendant Hasty's vehicle came upon the scene headed in the same direction as the taxicabs and struck both of them and the plaintiff standing in the middle of the left lane.

Upon appeal by McNaughton of the adverse verdict, the South Carolina Supreme Court held that a directed verdict should have been granted as to him, since the plaintiff was contributorily negligent and reckless in that he saw the Hasty vehicle approaching from one-half mile away and had ample time to get out of the road but did not do so.

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56. *Id.* at 142, 132 S.E.2d at 390.
57. 243 S.C. 469, 134 S.E.2d 397 (1964).

Lynch v. Alexander[58] was a suit under the guest passenger statute[59] for the wrongful death of a guest passenger. The court affirmed the verdict for the plaintiff, holding that the question of contributory recklessness on the part of the decedent was a jury question and not a matter of law.

The case contains an excellent statement of the duty of the guest to protest the manner of operation of the automobile and to leave it for his own protection, and the opinion goes more fully into those matters than any other South Carolina decision, the ultimate test being summed up as follows:

> The test, therefore, is not whether a guest, knowing that the driver's conduct is improper, has a reasonable opportunity to leave the automobile, but whether a reasonable opportunity being afforded, a person in the exercise of ordinary care would have done so under the circumstances.[60]

Powell v. Shore[61] arose from a collision which occurred when the defendant coming from Myrtle Beach on old Highway 501 collided with the plaintiff entering an intersection against a yield right-of-way sign. The court upheld the jury verdict for the plaintiff, refusing to find the plaintiff guilty of contributory wilfulness as a matter of law. The defendant's motion for directed verdict was upon the sole ground of contributory wrongdoing on the plaintiff's part, apparently conceding wilfulness on the defendant's part.

In *Clark v. Southern Ry.*[62] the court reversed an order of involuntary nonsuit in an automobile-railroad crossing case and held that a jury issue was presented as to whether the plaintiff was guilty of gross contributory negligence, particularly since the plaintiff was familiar with the crossing and his view in one direction was obstructed by tall weeds.

In *Isgett v. Atlantic Coast Line R.R.*[63] the court of appeals reversed Judge Martin's direction of verdict in favor of the railroad. The car in which the plaintiff's decedent was riding went too far to its left at the crossing and lodged against one of the rails of the double track crossing where it stalled and was struck

58. 242 S.C. 208, 130 S.E.2d 563 (1963).
59. S.C. Code Ann. § 46-801 (1962).
60. Lynch v. Alexander, 242 S.C. 208, 214, 130 S.E.2d 563, 566 (1963).
61. 242 S.C. 403, 131 S.E.2d 155 (1963).
62. 243 S.C. 27, 131 S.E.2d 844 (1963).
63. 328 F.2d 364 (4th Cir. 1964).

by the train before the plaintiff's decedent and the other occupants had gotten out, although they had a minute and a half to do so. The pavement was twenty-nine feet wide on both sides of the tracks approaching the crossing, but only eighteen feet wide at the crossing. The court held that the decedent's failure to extricate himself from the stalled atuomobile was not contributory negligence as a matter of law, since the reason why the car stalled where it did was important, and since the railroad had the burden of proving that he had freedom to get out, all such issues being for the jury.

In *Williams v. Davis*[64] a wrongful death action, the plaintiff's case was based largely upon circumstantial evidence. The plaintiff's intestate had driven a pickup truck into the highway from a private driveway on the defendant's right. After stopping, before entering the highway, he was in the process of making a left turn when the defendant's pulp wood truck, traveling at 45 miles per hour, struck the pickup truck killing the driver. The court set aside the verdict for plaintiff on the grounds that the plaintiff's intestate was contributorily negligent in that he either saw or should have seen the defendant's oncoming truck, and failed to yield the right-of-way to it or he failed to look for approaching traffic before entering the highway. This case holds clearly, in line with older authority, that merely stopping before entering the highway is not sufficient and does not relieve one of further responsibility, but one must look for approaching traffic in such a manner as to accomplish the purpose of looking. In other words, stopping and looking is not enough: you must stop and take a good look.

Suber v. Smith[65] arose from the quite common situation in which a motorist turns off a main highway at night onto a secondary paved road and stops his automobile partly on the shoulder but mostly on the pavement and goes into adjacent woods for the purpose of relieving himself. The plaintiff had done so in this case, and had left his lights burning and the engine running. When he returned to the car, he noticed lights of the defendant's automobile approaching from his rear and decided to remain parked until it had passed him. Although there was ample room for the defendant's vehicle to have passed the plaintiff's automobile on its left, the defendant's vehicle collided with the rear of the plaintiff's vehicle, injuring the plaintiff. The trial judge

64. 243 S.C. 524, 134 S.E.2d 760 (1964).
65. 243 S.C. 458, 134 S.E.2d 404 (1964).

nonsuited the plaintiff and the South Carolina Supreme Court affirmed upon the grounds that the plaintiff was guilty of contributory negligence as a matter of law in violating the applicable code section,[66] and that the defendant collided with the rear of the plaintiff's automobile does not amount to recklessness absent a showing of unlawful speed, and therefore is insufficient to overcome the plaintiff's contributory negligence.

The law applicable to the case was stated thusly:

> We have held that in an action for damages arising out of collision with a vehicle standing on the highway, the burden of proving the necessity for stopping a vehicle on the main-traveled portion of the highway where practicability of moving it off such portion, within the meaning of the aforesaid statute regulating stops on the highway, is on the person who makes such stop. . . . When it is necessary for a motorist to stop his vehicle along the road, he has the duty, where it is reasonably possible, to drive until he finds a space to stop off the traveled portion of the road. . . . It has also been held that if there is sufficient space for stopping off the traveled portion of the highway or if there is a driveway or side road near, and the stopping motorist is able to move his vehicle into that area, he may be charged with negligence in failing to do so. It is no excuse for the violation of such a statute that the driver was in the vehicle and at the wheel at the time it was left standing on the highway. . . .[67]

The decision is also authority for the principle that a motorist who subsequently collides with the rear of a vehicle in front of him is entitled to assume that the foremost vehicle would not obstruct the highway unlawfully.

Miscellaneous Automobile Cases

In *Boyleston v. Baxley*[68] the plaintiff was injured in a collision with an automobile she was meeting which went out of

66. S.C. Code Ann. § 46-481 (1962).
Outside of business or residence districts.—Upon a highway outside of a business or residence district no person shall stop, park or leave standing any vehicle, whether attended or unattended, upon a paved or main-traveled part of the highway when it is practicable to stop, park or leave such vehicle off such part of such highway, but in every event an unobstructed width of the highway opposite a standing vehicle shall be left for the free passage of other vehicles and a clear view of such stopped vehicle shall be available from a distance of two hundred feet in each direction upon such highway.
67. Suber v. Smith, 243 S.C. 458, 465, 134 S.E.2d 404, 407 (1964).
68. 243 S.C. 281, 133 S.E.2d 796 (1963).

control. The defendant's intestate, J. B. Baxley, was found dead with a broken neck after the collision in the car also occupied by Noah Baxley. The defendant appealed from the adverse verdict of 45,000 dollars upon two grounds: (1) the evidence was insufficient to show that J. B. Baxley was driving the automobile; (2) the trial judge erred in refusing to allow the defendant's counsel to argue to the jury as a reasonable inference whether or not defendant's intestate was dead or alive at the time of the collision.

On the first point, the court held that despite the absence of direct testimony, the circumstantial evidence was sufficient to support the conclusion that J. B. Baxley was driving the vehicle as he had been seen driving the car one mile before the collision, and there was testimony that Noah Baxley had never been seen to drive an automobile in thirty years.

The second point on appeal was based upon the testimony of the examining physician on cross-examination that the only way to establish the cause of death as a scientific fact, excluding all other possible causes, is to perform an autopsy, which had not been done, and that the witness could not be sure that J. B. Baxley had not suffered a heart attack prior to the collision. The court rejected the defendant's contention that argument to the jury should have been allowed on the possibility of a fatal heart attack before the collision, stating that the natural inference was that the intestate was killed in the collision and there was no contrary evidence. The court, however, recognized the principle that:

> '. . . the operator of an automobile is not ordinarily chargeable with negligence because he is suddenly stricken by a fainting spell, or loses consciousness from some other unforeseen cause, and is unable to control the vehicle.' However, one who relies upon this principle, in explanation of apparently negligent conduct, has the burden of proving sudden incapacity. 'Of course, before the operator can be exonerated under this rule, the evidence must have been sufficient to prove sudden loss of consciousness.'[69]

Skipper v. Hartley[70] involved a novel question which the South Carolina Supreme Court had little difficulty deciding: whether participants racing motor vehicles on public highways

69. *Id.* at 284, 133 S.E.2d at 797.
70. 242 S.C. 221, 130 S.E.2d 486 (1963).

are jointly and concurrently liable. In this wrongful death action, the plaintiff's intestate was killed while a passenger in an automobile struck by the Sessions automobile which was racing the Hartley and Kennedy vehicles. The plaintiff sued all three participants in the race. Sessions defaulted; the plaintiff covenanted not to prosecute suit further against Kennedy; and a verdict resulted against Sessions for 10,000 dollars actual and 15,000 punitive damages and against Hartley, the only appellant, for 5,000 dollars actual and 10,000 dollars punitive damages.

Despite the fact that there was no contact with the Hartley automobile, the court had no difficulty in upholding the verdict, applying well-settled principles. Racing on public highways is forbidden by statute,[71] violation of which is negligence *per se*, it being a jury question whether such violation contributed as a proximate cause to the plaintiff's injuries. The court relied on general authorities and a North Carolina case[72] to the effect that the primary negligence involved is participating in the race itself and that all participants are jointly liable.

Allen v. Hatchell[73] was a suit for death of a guest passenger. The plaintiff's intestate, Mrs. Allen, had been riding in Mrs. Hatchell's automobile which was involved in a collision with the Garner automobile in the intersection of secondary Highway S-17-54 with through State Highway No. 38. The intersection was a stop intersection as to the Hatchell vehicle on the secondary road, and the testimony was contradictory as to whether Mrs. Hatchell fully stopped. The Garner automobile had been parked about 300 feet from the intersection, had made a U-turn and had been driving into the intersection at an unlawfully excessive rate of speed without lights, according to testimony of Mrs. Hatchell's witnesses. The plaintiff originally sued both Garner and Mrs. Hatchell, but let Garner out on a covenant not to sue for 3,000 dollars. The plaintiff got a verdict of 25,000 dollars against Mrs. Hatchell, which was reversed and remanded for a new trial.

The South Carolina Supreme Court in its majority opinion held that the trial judge erred in failing to read the entire section 46-423[74] to the jury, and in reading only the second para-

71. S.C. CODE ANN. § 46-356 (1962).

72. Boykin v. Bennett, 253 N.C. 652, 118 S.E.2d 12 (1961).

73. 242 S.C. 458, 131 S.E.2d 516 (1963).

74. S.C. CODE ANN. § 46-423 (1962).
Vehicle entering through highway or stop intersection.—The driver of a vehicle shall stop as required by this chapter at the entrance to a through

graph, as the charge might have erroneously conveyed to the jury the impression that Garner on the dominant highway had an absolute right-of-way at the intersection, since the second paragraph of the section inexplicably omits a statement as to the duty of the driver on the dominant highway. It should be noted that due to a quirk in the statute[75] the driver of a vehicle on an unfavored highway intersecting with a through highway is in a more favorable position than the driver on an unfavored highway intersecting with merely a stop highway, as opposed to a through highway. Further, the court held that the judge erred in his charge on speed in that he erroneously told the jury in effect that the prima facie speed limit of fifty-five miles per hour was applicable and that the jury could disregard the posted thirty-five miles per hour speed limit.

The opinion also contains the following statement on the presumption of obeying the law:

> Although it was incumbent upon the appellant here to yield the right of way, she was not required to anticipate the approach of a vehicle operated in an unlawful manner. In the absence of any circumstances which would reasonably give notice to the contrary, the appellant was entitled to presume that other approaching vehicles would be operated in accordance with the law and she would not be negligent, let alone reckless, in so assuming. . . . The appellant was entitled to have her conduct judged in the light of the foregoing presumption. . . .[76]

Yaun v. Baldridge[77] is an important case on the question of proper control. The appeal involved two suits tried together, one by parents for medical expenses and other consequential damages and the other by a minor passenger against her host.

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highway and shall yield the right of way to other vehicles which have entered the intersection from the through highway or which are approaching so closely on such through highway as to constitute an immediate hazard, but such driver having so yielded may proceed and the drivers of all other vehicles approaching the intersection on such through highway shall yield the right of way to the vehicle so proceeding into or across the through highway.

The driver of a vehicle shall likewise stop in obedience to a stop sign as required herein at an intersection where a stop sign is erected at one or more entrances thereto although not a part of a through highway and shall proceed cautiously, yielding to vehicles not so obliged to stop which are within the intersection or approaching so closely as to constitute an immediate hazard, but may then proceed.

75. *Ibid.*

76. Allen v. Hatchell, 242 S.C. 458, 468, 131 S.E.2d 516, 522 (1963).

77. 243 S.C. 414, 134 S.E.2d 248 (1964).

In the latter case the parties had been dating at the time of the collision and were married two months later. The accident occurred on a winding paved highway with narrow unkept dirt shoulders, and with trees growing close to the paved surface in places. The posted speed limit was 35 miles per hour. The automobile being driven by the defendant veered to the right of the highway, traveled for about fifty feet on a narrow dirt shoulder and then struck a tree, resulting in serious personal injuries to the plaintiff guest passenger who was sitting on the driver's right on the front seat. The defendant's explanation was that when the plaintiff became irresponsive, he looked at her, saw her head falling and reached out to grab her, moving over in the seat closer to her, and then felt something pull the wheel after a few seconds and looked up to see the tree immediately in front of him.

The defendant appealed from the adverse verdict contending that as a matter of law the evidence was insufficient to support a verdict under the guest statute. The court rejected such contention, stating:

> These undisputed facts, standing alone, are susceptible of either of two inferences: (1) That the defendant deliberately brought about the collision; or (2) that the defendant exercised no control over the movement of the automobile just prior to the collision. Either inference inculpates him and calls for a reasonable explanation.[78]

The court upheld the verdict below, reasoning as follows:

> According to his own testimony, for an interval of time this defendant completely abandoned the performance of his duty to keep a lookout and to control the movement of his automobile. He seeks to justify this otherwise grossly reckless conduct on the ground that it was necessary for him to do so in order to protect plaintiff from harm. Viewing the evidence in a light favorable to plaintiff, as must be done in passing upon the exceptions to the refusal of the court to direct a verdict, we think that jury issues were presented. The jury could with reason have decided that there was no such emergency as actually or apparently required defendant's intervention before bringing his automobile to a safe stop. If there was, the evaluation of his conduct in the light of the emergency was likewise for the jury. These issues were

78. *Id.* at 417, 134 S.E.2d at 250.

properly submitted to the triers of the facts under a fair charge.[79]

In *Christy v. Reid*,[80] a guest passenger case, the South Carolina Supreme Court reversed the order of involuntary nonsuit granted below. Basing its decision upon the recent case of *Yaun v. Baldridge*[81] the court stated:

> It is true that there was no direct evidence presented by Appellant's witnesses as to excessive speed, and it is doubtful whether the evidence presented as to faulty steering mechanism is sufficient to warrant a reasonable inference of recklessness; however, the fact that the automobile, in the city limits, in a 35 m. p. h. zone, while making a left turn, skidded to the right, jumped the curb, traveled approximately 64 feet before striking a telephone pole with such force as to completely sever it and turn over is susceptible of the inference that the driver acted in reckless disregard of the rights of its passengers sufficient to require submission of the case to the jury.[82]

In *Dudley Trucking Co. v. Hollingsworth*[83] the court re-affirmed established principles. One of the defendant's tractor-trailer units stopped in the nighttime off the roadway in front of another of the defendant's units which stopped partly on the pavement where the shoulder was wide enough to accommodate the rig. The front vehicle was lighted, the rear one unlighted. The plaintiff's tractor-trailer was severely damaged when it collided with the unlighted rear unit from the rear. The court held that all issues were properly submitted to the jury, that under the applicable statute[84] the driver of a disabled vehicle is prohibited from stopping on the main traveled portion of the highway only when the vehicle is disabled so that it is impossible to avoid making such stop, and that the burden of proving the necessity or excuse for stopping on the highway is upon the person making such a stop. Further, even if the plaintiff's driver were speeding, the jury could have found that to be merely simple negligence and the defendant's misconduct recklessness.

79. *Id.* at 420, 134 S.E.2d at 251.
80. 244 S.C. 27, 135 S.E.2d 319 (1964).
81. 243 S.C. 414, 134 S.E.2d 248 (1964).
82. Christy v. Reid, 244 S.C. 27, 31-32, 135 S.E.2d 319, 321 (1964).
83. 243 S.C. 439, 134 S.E.2d 399 (1964).
84. S.C. CODE ANN. § 46-481 (1962).

The application of the same statute was involved in *Suber v. Smith*[85] reviewed above.

Summers v. Watkins Motor Lines[86] was a death action arising from an intersection collision of the defendant's truck on the favored highway and the automobile in which the plaintiff's intestate was riding on the unfavored highway. The testimony was in conflict as to whether the automobile on the unfavored highway had stopped as required by a stop sign. There was testimony that the truck was traveling at an excessive speed. Judgment for the plaintiff was affirmed, all issues being for the jury. The court of appeals to some extent relied upon the decision of *Warren v. Watkins Motor Lines*,[87] a companion case arising from the same collision tried in the state court, in which a judgment for the plaintiff was upheld by the South Carolina Supreme Court. The *Warren* case[88] in the state court is an important decision on the right-of-way at an intersection and the correlative rights and duties of the motorist on the two highways.

Knight v. Johnson[89] holds that the defendant was properly allowed to introduce testimony as to the plaintiff's motive for haste, in that the plaintiff in an angry and upset mood was hurrying to take his son to the doctor. The South Carolina Supreme Court held for the first time in this state that:

"Ordinarily, testimony showing a motive for haste is relevant upon the issue of speed."[90]

Griffin v. Pitt County Transp. Co.[91] arose from a collision which occurred when the plaintiff turned left from the highway into a private driveway while the defendant's tractor-trailer truck was apparently in the process of passing from the rear. In view of the disputed evidence as to the speed and position of the truck and the giving of signals by the plaintiff, the court held that all issues were properly submitted to the jury and that the plaintiff was not guilty of contributory wilfulness as a matter of law.

Hatchell v. McCracken[92] holds that where a jury's verdict for unliquidated damages is inadequate, the trial judge cannot award

85. 243 S.C. 458, 134 S.E.2d 404 (1964).
86. 325 F.2d 120 (4th Cir. 1963).
87. 242 S.C. 331, 130 S.E.2d 896 (1963).
88. *Ibid.*
89. 244 S.C. 70, 135 S.E.2d 372 (1964).
90. *Id.* at 72, 135 S.E.2d at 373.
91. 242 S.C. 424, 131 S.E.2d 253 (1963)
92. 243 S.C. 45, 132 S.E.2d 7 (1963).

judgment in a sum greater than the jury's verdict without giving the plaintiff, as well as the defendant, the option of a new trial.

In the interesting case of *Daniel v. Hazel*[93] the South Carolina Supreme Court held the trial judge did not err in refusing to grant the plaintiff a new trial for inadequacy of the verdict for $7.50 for tail-light and $15.00 for first physical examination, all issues having been properly submitted to the jury.

93. 242 S.C. 443, 131 S.E.2d 260 (1963).